

No. 12-1788

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MARY E. SHEPARD and ILLINOIS STATE RIFLE ASSOCIATION,)	Appeal from the United States
)	District Court for the
Plaintiffs-Appellants,)	Southern District of Illinois
)	Benton Division
v.)	No. 11-405-WDS-PMF
)	
LISA MADIGAN, et al.,)	The Honorable
)	William D. Stiehl,
Defendants-Appellees.)	Judge Presiding.

MOTION TO STAY BRIEFING AND HOLD APPEAL IN ABEYANCE

Pursuant to Fed. R. App. P. 27, Defendants-Appellees Lisa Madigan, Tyler Edmonds, and Patrick Quinn (“defendants”) move to stay the briefing schedule and hold this appeal in abeyance pending resolution of the pending appeal in *Moore v. Madigan*, No. 12-1269 (7th Cir.), which presents identical issues.

1. Plaintiffs in this appeal challenge, under the Second Amendment, several Illinois statutes that prohibit carrying loaded, operable firearms in public. See DDoc. 2 (complaint challenging 720 ILCS 5/24-1(a)(4), (a)(10) and 1.6).¹ The district court dismissed plaintiffs’ complaint for failure to state a claim, holding that “the bearing of a firearm outside the home is not a core right protected by the Second Amendment,” DDoc. 57 at 19, and plaintiffs have filed their notice of appeal, DDoc. 58.

¹ Citations to the district court’s docket appear as “DDoc. ____.”

2. An identical appeal is already pending in this Court. In *Moore v. Madigan*, a different set of plaintiffs raised an identical attack on the same Illinois statutes. See *Moore v. Madigan*, No. 11-3134, — F.Supp.2d —, 2012 WL 344760, at *1 (C.D. Ill. Feb. 3, 2012). And, just like the district court in this case, the district court in *Moore* dismissed the complaint for failure to state a claim, holding that “individuals do not have a Second Amendment right to bear arms outside of the home.” *Id.* at *15. The plaintiffs in *Moore* appealed on February 3, 2012 and filed their opening brief in this Court on March 3, 2012. See *Moore v. Madigan*, No. 12-1269 (7th Cir.), Doc. 9. The appellees’ brief in *Moore* is currently due on May 2, 2012, on one extension of time. See *Moore*, No. 12-1269, Doc. 13.

3. This Court may hold an appeal in abeyance where a previously filed appeal raises issues that are dispositive to the later-filed appeal. See, e.g., *Damasco v. Clearwire Corp.*, 662 F.3d 891, 894 (7th Cir. 2011). The Court should do so here. This appeal and the *Moore* appeal both involve the same official defendant (Lisa Madigan) and the same defense counsel (the Illinois Attorney General’s Office). Moreover, both raise precisely the same legal issue: whether 720 ILCS 5/24-1(a)(4), (a)(10) and 1.6 are valid under the Second Amendment. Indeed, the district court in this case explicitly adopted portions of the district court’s opinion in *Moore*. See DDoc. 57 at 14 n.7. Only the plaintiffs in the two cases are different, but this difference is legally immaterial, for nothing particular to the parties is relevant to their Second Amendment theories, nor was anything particular to the parties relevant to either of the district courts’ decisions.

4. Accordingly, this Court's decision in *Moore* will fully determine the outcome of this appeal. Requiring a second round of briefing in this appeal would needlessly expend judicial and party resources.

5. Nor would it be appropriate to consolidate this case with *Moore* instead of holding it in abeyance. As discussed, briefing in *Moore* is already well under way, and consolidating the two cases would restart and delay that process. Consolidation would also waste the substantial resources the *Moore* parties have already invested in briefing that case.

6. The undersigned counsel for defendants Madigan, Edmonds, and Quinn has discussed this motion with Joseph Bleyer, counsel for Defendant David Livesay. Mr. Bleyer indicated that he has no objection to the motion.

7. Accordingly, defendants respectfully request that this Court suspend briefing in this case and hold this appeal in abeyance pending resolution of the identical issues in *Moore v. Madigan*, No. 12-1269 (7th Cir.).

April 9, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2012, I electronically filed the foregoing **Motion to Stay Briefing and Hold Appeal in Abeyance** with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

The participants in the case who are currently CM/ECF users will be served through that system. I further certify that some of the participants in the case are not currently CM/ECF users. I have mailed the aforementioned motion by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

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April 9, 2012

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